

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
STATE OF MONTANA

IN THE MATTER OF THE PROPOSED
DISCIPLINARY TREATMENT OF THE
INSURANCE PRODUCER LICENSE OF
JAMES M. DARBY, License #12168.

Case No. 2001-072

DEFAULT ORDER

Prior to December 24, 2001, a Notice of Proposed Agency Action and Opportunity for Hearing (hereafter, Notice) was properly served on Respondent James M. Darby at P.O. Box 398, Sheridan, Montana 59749, by U.S. postal service certified mail, certified #7000 1670 0010 1191 3937, pursuant to Mont. Code Ann. §§ 33-1-314 and 33-17-214. The U.S. postal service "domestic return receipt" was returned to this office on December 24, 2001, and a true and correct copy of the same is attached hereto as Exhibit "B". Further, a true and correct of the Notice is attached hereto as Exhibit "C".

The Notice advised Respondent Darby that he had twenty (20) days from receipt of the Notice to make a written request for a hearing to contest the allegations and proposed action set out in the Notice. The Notice further advised Respondent Darby that, if he failed to request a hearing, a default order revoking his insurance producer license would be entered. More than twenty (20) days have elapsed since service of the Notice and a request for hearing has not been received. Upon consideration of the evidence and exhibits, the State Auditor and Commissioner of Insurance makes the following determinations:

FINDINGS OF FACT

1. At all times relevant to these proceedings, Respondent Darby was a licensed insurance producer, Montana license #12168, doing business as Darby Insurance and/or Ruby Valley Insurance Associates.

2. Madison County Attorney Robert R. Zenker filed an Affidavit of Probable Cause,

1 Docket No. DC-29-01-12, Montana Fifth Judicial District Court, Madison County, alleging
2 that Respondent Darby exerted unauthorized control over insurance premiums totaling
3 \$27,106.58 by failing to forward these premiums to the affected insurance companies. The
4 Affidavit of Probable Cause further alleged that, by doing so, Respondent Darby had
5 committed a felony violation of Mont. Code Ann. § 33-1-1202(4) (insurance fraud) and
6 misdemeanor violations of Mont. Code Ann. §§ 45-6-317 (deceptive practices) and 45-6-
7 301(2)(b) (theft).

8 3. On September 18, 2001, pursuant to the Minute Entry for *State v. James M. Darby*,
9 Cause No. DC-29-01-12, Montana Fifth Judicial District Court, Madison County, Respondent
10 Darby entered a plea of guilty to the felony violation of Mont. Code Ann. § 33-1-1202(4)
11 (insurance fraud).

12 4. By his plea of guilty to the felony violation of Mont. Code Ann. § 33-1-1202(4),
13 Respondent Darby has admitted that he accepted premium money in the amount of \$27,106.58
14 and exerted unauthorized control over said premium money by failing to forward it to the
15 insurance companies.

16 5. On or about December 7, 2000, Respondent Darby received check number #4762
17 for \$5,736.00, payable to Darby Insurance, from the [REDACTED] for a
18 farm/ranch policy underwritten by Safeco Insurance Company. This check was deposited into
19 Ruby Valley National Bank Account [REDACTED] Darby Insurance Trust Account.
20 Respondent Darby failed to remit the premium to Safeco and on or about February 9, 2001,
21 the policy was cancelled for nonpayment of the premium.

22 CONCLUSIONS OF LAW

23 1. The State Auditor is the Commissioner of Insurance pursuant to Mont. Code Ann. §
24 2-15-1903.

25 2. The Insurance Department is under the control and supervision of the Commissioner
26 pursuant to Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

27 3. The Commissioner shall administer the Insurance Department to protect insurance

1 consumers pursuant to Mont. Code Ann. § 33-1-311.

2 4. By improperly withholding, misappropriating, and/or converting to his own use,
3 money belonging to policy holders and/or insurers received by Respondent Darby in the
4 conduct of business under insurance producer license #12168, Respondent Darby violated
5 Mont. Code Ann. § 33-17-1001(d) and Mont. Code Ann. § 33-17-1102(1) and (2).

6 5. Additionally, Respondent Darby violated Mont. Code Ann. § 33-17-1001(f) by
7 using fraudulent, coercive or dishonest practices in the conduct of business under insurance
8 producer license #12168.

9 6. Pursuant to Mont. Code Ann. § 33-1-1001(1), the Commissioner may suspend,
10 revoke, refuse to renew or may levy a civil penalty in accordance with Mont. Code Ann. § 33-
11 1-317 or choose any combination of actions when an insurance producer is found to be in
12 violation of Mont. Code Ann. § 33-17-1001(1).

13 ORDER

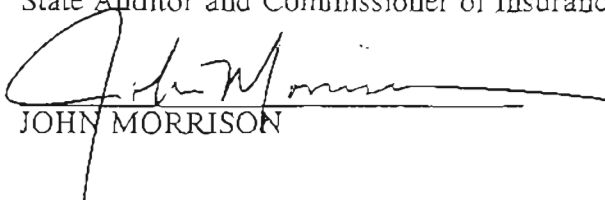
14 Based upon Respondent Darby's failure to request a hearing and the foregoing Findings
15 of Fact and Conclusions of Law, the State Auditor and Commissioner of Insurance hereby
16 orders that the insurance producer license of James M. Darby is revoked effective
17 immediately.

18 NOTICE

19 Respondent Darby is hereby notified that he may request judicial review of this default
20 order by filing a petition for judicial review within thirty (30) days of service of this default
21 order in a district court of the State of Montana, as provided in Mont. Code Ann. §§ 2-4-702
22 and 33-1-711.

23 DATED this 14 day of January, 2002.

24
25 State Auditor and Commissioner of Insurance

26 
27 JOHN MORRISON

CERTIFICATE OF SERVICE

I hereby certify that on the 18 day of JANUARY, 2002, I served
a true and accurate copy of the foregoing Default Order upon the Respondent, by certified
U.S. mail, postage prepaid, receipt # _____
postage prepaid, at the following address:

James M. Darby
P.O. Box 398
Sheridan, MT 59749

Darla Sautter

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

James M. Darby
PO Box 348
SHERIDAN MT 59745

A Received by (Please Print Clearly)	B Date of Delivery
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8 Date of Delivery

C. Signature

(X)

☐ Agent

☐ Addressee

0. Is delivery address different from item i?

☐ Yes

If YES, enter ~~delivery~~ address below:

☐ No

3 Service Type

☐ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail

C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number (Copy from service label)

7000 1670 0010 1191 3937

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0932

Return Receipt
ARLA / SENNIFIA / DAREBU

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

STATE AUDITORS OFFICE
840 Helena Avenue
Helena, MT 59601

RECEIVED
STATE AUDITOR'S
OFFICE

Dec 21 1 49 PM '01

360 1 + 7422

[illegible]

EXHIBIT

10/11/2011

B

Case No. 2001-072

1 Jennifer Massman
2 Legal Counsel
3 State Auditor's Office
4 840 Helena Ave.
5 Helena, MT 59601
6 Telephone: (406) 444-5223
7

8 BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
9 STATE OF MONTANA

10 IN THE MATTER OF THE PROPOSED
11 DISCIPLINARY TREATMENT OF THE
12 INSURANCE PRODUCER LICENSE OF
13 JAMES M. DARBY, License #12168.

) Case No. 2001-072

) NOTICE OF PROPOSED
) AGENCY ACTION AND
) OPPORTUNITY FOR HEARING
) (License Revocation)

14 TO: James M. Darby
15 P.O. Box 398
16 Sheridan, MT 59749

17 PLEASE TAKE NOTICE:

18 Staff of the Insurance Department of the office of the State Auditor and Commissioner
19 of Insurance of the state of Montana (Commissioner), pursuant to the authority of the Montana
20 Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, is proposing that the Commissioner
21 take disciplinary action against your insurance producer license for violations of Title 33,
22 Chapter 17 of the Montana Code Annotated. Specifically, staff is proposing revocation of your
23 insurance producer license. The Commissioner has authority to take such action under the
24 provisions of Mont. Code Ann. §§ 33-1-311, 33-1-314, 33-1-317, 33-17-411, 33-17-1001, and
25 33-17-1002.

26 Service of process is effective by mail pursuant to Mont. Code Ann. § 33-1-314.
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References

1 6. The State Auditor's Office received information that, on or about December 7,
2 2000, you received check number #4762 for \$5,736.00, payable to Darby Insurance, from the
3 [REDACTED] for a farm/ranch policy underwritten by Safeco Insurance
4 Company. This check was deposited into Ruby Valley National Bank Account [REDACTED]
5 Darby Insurance Trust Account. You failed to remit the premium to Safeco and on or about
6 February 9, 2001, the policy was cancelled for nonpayment of the premium.

7 CONCLUSIONS OF LAW

8 1. The State Auditor is the Commissioner of Insurance pursuant to Mont. Code Ann. §
9 2-15-1903.

10 2. The Insurance Department is under the control and supervision of the Commissioner
11 pursuant to Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

12 3. The Commissioner shall administer the Insurance Department to protect insurance
13 consumers pursuant to Mont. Code Ann. § 33-1-311.

14 4. By improperly withholding, misappropriating, and/or converting to your own use,
15 money belonging to policy holders and/or insurers received by you in the conduct of business
16 under insurance producer license #12168, you are in violation of Mont. Code Ann. § 33-17-
17 1001(d) and Mont. Code Ann. § 33-17-1102(1) and (2).

18 5. Additionally and alternatively, you are in violation of Mont. Code Ann. § 33-17-
19 1001(f) by using fraudulent, coercive or dishonest practices in the conduct of business under
20 insurance producer license #12168.

21 6. Pursuant to Mont. Code Ann. § 33-1-1001(1), the Commissioner may suspend,
22 revoke, refuse to renew or may levy a civil penalty in accordance with Mont. Code Ann. § 33-
23 1-317 or choose any combination of actions when an insurance producer is found to be in
24 violation of Mont. Code Ann. § 33-17-1001(1).

25 STATEMENT OF RIGHTS

26 You are entitled to a hearing and to respond to this Notice and present evidence and
27 arguments on all issues involved in this case. You may have a formal hearing before a hearing

1 examiner appointed by the Commissioner as provided in the Montana Administrative
2 Procedure Act. Mont. Code Ann. § 2-4-601, *et seq.* If you demand a hearing, you will be
3 given notice of the time, place and the nature of the hearing. Pursuant to Mont. Code Ann. §
4 33-1-701(2), the hearing shall be held within 30 days after receipt of the demand by the
5 commissioner, unless postponed by mutual consent.

6 You have a right to be represented by an attorney at any and all stages of this
7 proceeding.

8 If you wish to resist the proposed action under the jurisdiction of the Commissioner,
9 you must so advise him within twenty (20) days of the date you receive this Notice. You may
10 so advise him by writing to Jennifer Massman, Staff Attorney, State Auditor's Office, 840
11 Helena Ave, Helena, Montana 59601. While so advising Ms. Massman, you should make
12 clear whether you demand a hearing, or whether you waive formal proceedings and, if so,
13 what informal proceedings you prefer for handling this case. Pursuant to Mont. Code Ann. §
14 2-4-603(2), you may not request to proceed informally if the action could result in suspension,
15 revocation or any other adverse action against a professional license.

16 Should you request a hearing, you have the right to be accompanied, represented, and
17 advised by counsel. If the counsel you choose has not been admitted to practice law in the
18 state of Montana, he or she must comply with the requirements of Application of American
19 Smelting and Refining Co., 164 Mont. 139, 520 P.2d 103 (1973).

20 CONTACT WITH COMMISSIONER'S OFFICE

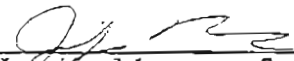
21 If you have questions or wish to discuss this matter, please contact Jennifer Massman,
22 Staff Attorney, State Auditor's Office, 840 Helena Ave, Helena, MT, 59601, (406) 444-5223
23 or, within Montana, (800) 332-6148. If you are represented by an attorney, please make any
24 contacts with this office through your attorney.

25 POSSIBILITY OF DEFAULT

26 Failure to give notice or to advise of your demand for a hearing or form of informal
27 procedure within twenty (20) days, will result in the entry of a default order revoking your

1 license, without any additional notice to you, pursuant to Mont. Admin. R. 6.2.101 and the
2 Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

3 DATED this 18th day of December, 2001.

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7 Jennifer Massman, Staff Attorney
8 Insurance Department
9 State Auditor's Office
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CERTIFICATE OF SERVICE

I hereby certify that on the 18 day of DECEMBER, 2001, I served
a true and accurate copy of the foregoing Notice of Proposed Agency Action and Opportunity
for Hearing upon the Respondent, by certified mail, postage prepaid, receipt #

7000 1670 0010 1191 3937 at the following address:

James M. Darby
P.O. Box 398
Sheridan, MT 59749

Darla Sautter

1 Jennifer Massman
Legal Counsel
2 State Auditor's Office
840 Helena Ave.
3 Helena, MT 59601
Telephone: (406) 444-5223
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8 BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
STATE OF MONTANA
9

10 IN THE MATTER OF THE PROPOSED)
DISCIPLINARY TREATMENT OF THE)
11 INSURANCE PRODUCER LICENSE OF)
JAMES M. DARBY, License #12168.)
12)
13)

Case No. 2001-072

MOTION FOR ENTRY OF
DEFAULT ORDER

14 COMES NOW Jennifer Massman, staff attorney for the Insurance Department, and
15 moves the State Auditor and Commissioner of Insurance for the entry of a default order in this
16 matter.

17 Prior to December 24, 2001, the Insurance Department duly served James M. Darby by
18 certified U.S. mail, certified #7000 1670 0010 1191 3937, with a Notice of Proposed Agency
19 Action and Opportunity for Hearing (hereafter, Notice) proposing revocation of his insurance
20 producer license. The Notice provided specific notice to Respondent Darby that he was
21 required to submit a written request for a hearing within twenty (20) days of the date on which
22 he received the Notice in order to preserve his right to challenge the proposed action under the
23 jurisdiction of the State Auditor and Commissioner of Insurance, otherwise a default order
24 revoking his insurance producer license would be entered. More than twenty (20) days has
25 elapsed since service of the Notice and no request for hearing has been received.

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